LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
FEB 26 1969
JOHN F. DAVIS, CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1968

No. 590

ROBERT JAYSON, WILLIAM K. JAYSON, JENNIE JAYSON,
Petitioners,

v.

THE UNITED STATES,
Respondent.

APPLICATION FOR REHEARING

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

O. P. EASTERWOOD, JR.,
Barr Building,
Washington, D. C.

Of Counsel:
CLAIR F. ACHENBACH,
Davis Building,
Dallas, Texas 75202.

THE WARLICK PRESS DIVISION, STECK-WARLICK CO.
P. O. BOX 10543 — 1455 ROUND TABLE DRIVE — DALLAS — NE 1-3130

In the

Supreme Court of the United States

OCTOBER TERM, 1968

No. 590

ROBERT JAYSON, WILLIAM K. JAYSON, JENNIE JAYSON,
Petitioners,

v.

THE UNITED STATES,
Respondent.

PETITION FOR REHEARING

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Within the extension of time granted to petitioners to file their petition for rehearing to and including February 26, 1969, this their petition is herewith filed and with the prayer that the previous action of this Court be reconsidered and set aside and a writ of certiorari issue to review the judgment of the United States Court of Claims entered as reported in that Court No. 332-66, and order of that Court in overruling petitioners' motion to set aside summary judgment under Rule 69(b) of the Court of Claims entered June 14, 1968.

OPINIONS BELOW

In *Jayson v. United States*, 294 F. 2d 808 (5th Cir. 1961) the judgment of the United States District Court for the Northern District of Texas, Dallas Division, in Civil Action No. 8072, United States of America, plaintiff, v. Certain Land in the City and County of Dallas, State of Texas, and O. E. Padgitt, et al., was affirmed.

In Robert Jayson, et al., appellants, v. Lawson B. Knott, individually, appellee, No. 19,768, Civil 1751-65, in the United States Court of Appeals for the District of Columbia Circuit, September Term, 1965, the judgment of the United States District Court for the District of Columbia dismissing the suit was affirmed, denying appellants relief.

JURISDICTION

The jurisdiction of this court is invoked under 28 USCA 1255(a).

QUESTION PRESENTED

Whether private citizens by conspiracy, collusion and fraud with an agency of the United States Government can with impunity violate United States statutes and the United States Constitution, and then by artful design deprive other citizens of their property without any due process of law?

CONSTITUTIONAL PROVISIONS

This petition involves Amendment V, "nor be deprived of life, liberty, or property, without due process of law;" of the Constitution of the United States.

STATUTES INVOLVED

United States Code, Title 40, Sections 257, 258(a), 298(a), 352; 69 Statutes 458, 72 Statutes 1066; Section 101 of Public Law 519, 83rd Congress, and Title I of Public Law 519, 83rd Congress.

STATEMENT

1. The petitioners are individuals and residents of the city and county of Dallas in the State of Texas.

2. (Note: Exhibits referred to under this Statement are all in the petition for writ of certiorari.)

3. Prior to January, 1957 the petitioners had acquired by purchase the fee simple title to improved real property in Dallas County, Texas known as 1021 Commerce Street, Dallas, Texas and described as Lot 6, Block 63 in Original City of Dallas, containing 10,000 square feet of land, for a consideration of $200,000.00.

4. This Lot 6 has commercial improvements, being a five story brick building with a basement. The building contains 65,000 square feet of floor space, including a balcony over the first floor with 5,000 square feet. Approximately $180,000.00 in improvements were made to the building by petitioners in-

cluding airconditioning, new elevators, new electrical wiring and plumbing, new flooring and ceilings. Part of this space was occupied by petitioners but most was lessee occupied or available for leasing.

5. Prior to 1957 a group of powerful real estate promoters had formed a syndicate and were acquiring entire blocks in the area adjoining Block 63 at an estimated value of $60,000,000.00 and continued their acquisitions by an estimated value of $14,000,000.00. Block 63 includes 1114 Commerce Street which is the present existing property for officers of the defendant in Dallas, Texas other than the Post Office and the Terminal Annex.

6. In January, 1957 the defendant, through the General Services Administration, published an Advertisement For Federal Building Site, GS-1058; a copy attached as Exhibit "A". This advertisement defined the boundaries of the area within which the site would be selected upon the bid opening at 2:00 P.M. CST on January 24, 1957, Exhibit "E".

7. The invitation for bids, Exhibit "A", contained the following provision:

> "Owners may submit their own proposals. Proposals submitted by agents must be accompanied by documentary evidence of authority."

8. Prior to the bid opening the syndicate had been in conference with the defendant through the General Services Administration, which is evidenced by their admission in the proposal dated January 23, 1957, a copy of which is attached as Exhibit "B", page 2 thereof;

"These advantages have been brought out in greater detail in a formal brochure previously presented to you, a copy of which is attached hereto and made a part hereof."

The proposal as submitted, Exhibit "B", on GSA Form 105 did not comply with the statutes or regulations governing such matters, as set out in Exhibit "C". Instructions for the submission of proposals Site Acquisition, with special reference to the first two paragraphs.

9. The syndicate violated the prohibition against modifying proposals after the time for bid opening as stated in Exhibit "C" by submitting a letter of guaranty dated December 24, 1957 to

Colonel Karl E. Wallace
Regional Commissioner
General Services Administration
1114 Commerce Street
Dallas 2, Texas

a copy of which letter of guaranty is attached as Exhibit "D", and in which the syndicate guarantees the defendent from having to expend more than one million ($1,000,000.00) dollars in acquisition of the land, including that of petitioners, and limiting the amount defendant shall pay for each lot in Block 63 without the prior approval of the guarantors. The syndicate thereby placed a ceiling upon the value and price of petitioners' land and offered it for sale without ever having communicated with the petitioners, nor did the syndicate ever have any authority to act for the petitioners in offering their property for sale or to place a value thereon. In the absence of any authority as petitioners' agents or

representatives, the syndicate impaired petitioners' rights by exerting undue influence upon the defendant to acquire Block 63, including Lot 6 of petitioners, by unlawful means and without due process.

10. Exhibit "D" violates the statute, USCA, Title 40, Section 298a, in that the guaranty stated in Exhibit "D" is conditional, in that it provided that the syndicate would contribute funds to the defendant *only if* a designated property was taken for the Federal Building. The syndicate, under this guaranty, allegedly paid the defendant $524,000, which was conditional and designed to influence, encourage and induce the defendant to take specific property owned by petitioners and others not members of the syndicate.

11. At the bid opening by defendant on January 24, 1957 only the proposal submitted by the syndicate was considered and accepted, although, according to petitioners' information and belief, the Regional Office of the General Services Administration acting for defendant, had indicated an earlier preference for a site several blocks East of that proposed by the syndicate and out of the area in which the syndicate was investing.

12. Subsequent to the bid acceptance of the proposal of the syndicate, Exhibit "B", the defendant instituted condemnation proceedings against the petitioners' property and that of the other owners in Block 63, excepting Lot 7, adjoining Lot 6 of petitioners. This part of Block 63 joins 1114 Commerce Street on the West. The syndicate by Exhibit "B" and "D" had made a guaranty of cost to the defendant upon property over which it had no legitimate control or authority

and caused appraisals to be placed upon the property based upon fictitious low value, and petitioners here and now serve notice upon defendant to produce any and all appraisals relating to the acquisition of the lots in Block 63 and especially those upon Lot 6.

13. In the condemnation proceedings in Civil Action No. 8072, United States of America v. Certain Land In the City of Dallas, Dallas County, State of Texas, O. E. Padgitt, et al., in the United States District Court for the Northern District of Texas, Dallas Division, petitioners were named defendants.

14. *In Civil Action No. 8072, the issues were limited to the amount of compensation under condemnation.* The trial court summarily and arbitrarily disposed of all questions relating to the inducement of the defendant herein by the syndicate to get defendant to select the site on Block 63. The petitioners were awarded a total sum of $380,000.00 by the court upon a jury verdict, from which petitioners' had to pay the sum of $40,000.00 to lessees of petitioners' lessees for cancellation of leases caused by the syndicate. Appeal was taken from this judgment to the United States Court of Appeals for the Fifth Circuit in No. 18604, Robert Jayson, et al., Appellants v. United States of America, Appellee, which court affirment the judgment of the trial court on October 13, 1961. As the trial court had limited the issues to the compensation under condemnation the issues relating to the inducement to the defendant in selecting this site and the violation of "due process" have never been decided. Further, petitioners did not learn of the actions of the

syndicate in the negotiations with the defendant until after the proceedings were concluded in the above suit and appeal therefrom, during which petitioners were able to obtain copies of the Exhibits attached, but not from the syndicate or the Dallas office of the General Services Administration.

15. Hearings were held by Committees of Congress concerning the irregular manner of acquisition of the property in Block 63, but no definitive action was taken to correct the irregularities but the Committees would not approve the project or appropriate the funds for construction. This is recorded in the Congressional Record, Vol. 107, dated June 26, 1961 at pages 10417-10437, inclusive, in which repeated references are made to the serious irregularities in the manner defendant acquired the site, including petitioners' property.

16. Subsequent to the proceedings in Civil Action No. 8072 and the appeal from that judgment, petitioners caused to be instituted Civil Action No. 1751-65 in the United States District Court for the District of Columbia, petitioners v. Lawson B. Knott, individually, which was a petition for injunction against defendant using the site selected, with judgment for the defendant and affirmed or appeal.

Note: All page references of Exhibits are to the original petition, which is incorporated by reference.

ADDITIONAL REASONS FOR GRANTING THE WRIT

All the reasons set out in the petiton for writ of certiorari, including all appendices, are incorporated herein by reference.

The quoted language of the trial court is again emphasized as convincing proof that the elements of the fraud and conspiracy between the syndicate and the defendant were never properly a part of any judicial proceeding. For emphasis, the language of the trial court set out on page 13 of its transcript and page 10 of the petition is quoted:

> "*THE COURT:* You are not going to have any trouble because I have excluded all transactions dealing with this property prior to the day we took it, and this declaration of taking was filed in toto except merely the contract and the names of the parties to it."

This summary, arbitrary ruling of the trial court at the pre-trial precluded petitioners from offering any evidence of the conspiracy and fraud preceeding the condemnation by the defendant. Double appraisals were not discovered by petitioners until after the hearings. All of this was in clear violation of petitioners inalienable right to due process of law, and renders the public policy rule of res judicata, only a rule of procedure, inapplicable under the decision in *Nunnally Investment Co. v. United States*, 36 F. Supp. 332 and well stated in 32 ALR 2d 1135;

> "A particular matter or issue which is withdrawn or withheld from consideration of the court, either by stipulation of the parties or otherwise, is not adjudicated, and a judgment entered on other issues will not act as a bar to another action on the issue so withdrawn."

The plain statement of the rule quoted and the plain report of the action of the trial court leaves no argument but what the trial court withdrew and withheld all questions relating to the conspiritorial actions of the syndicate in inducing the defendant to proceed with the condemna-

tion, which was only a screen of respectability and legality to cover the previous actions. These being withheld from the open proceedings before the jury by the trial court, a clearer situation could not be imagined for the application of the quoted rule in which the procedural rule of res judicata would not apply. Nor under a searching examination of the documents attached as exhibits to the petition, the Congressional hearings reported in the Congressional Record, Vol. 107, dated June 26, 1961 at pages 10417-10437, can but one conclusion be reached, and that is that the fundamental right of freedom from unjust invasion of property was violated against the petitioners, which is proscribed by the Amednment V of the United States Constitution.

With the facts so plain and the law so clear to demonstrate the violation of petitioners' fundamental rights, more persuasive reasons for granting the writ of certiorari need to be advanced in support of this petition for rehearing.

It becomes quite apparent that there exists a wide divergence between the views of the court and petitioners' advocate respecting "supreme law" and "fundamental justice", the court subscribing to the postivistic-sociological concepts while the advocate strongly subscribes to the natural law concepts which will be advocated here.

The compelling reason for granting the writ is to acknowledge the supreme law and fundamental justice thereunder according to esoteric Light.

The positistivic-sociological concepts of the law hold to the premise that man is basically a social animal and must form

communities for mutual assistance, community effort and protection. Environmental excuses are used to explain the individual's failure to measure up. Under these concepts law has no higher origin than what those in authority at any given time say it is, a purely materialistic-postivistic concept, upon which all totalitarian systems have been founded since antiquity — the state is supreme, there is no higher authority. A searching reading of both Biblical and secular history provides positive proof that ancient civilizations were rooted in this concept and perished because of it, Sodom and Gomorroh, Tyre and Sidon, Egypt, Babylon, Israel, Greece, Roman Empire, and in more modern times France and England.

Throughout the Ages there have been beacon lights acknowledging but one Supreme Author whose precepts and wisdom are revealed in the Holy Writ. Among these beacon lights was Frederic Bastiat, a French economist, statesman, and author who lived from 1801-1850. One of his works, The Law, was first published in 1850, and in which he reaffirmed that God is the only Soverign. Which he expresses;

> "We hold from God the gift which includes all others. This gift is life-physical, intellectual and moral life.
>
> But life cannot maintain itself alone. The Creator of life has entrusted us with the responsibility of preserving, developing, and perfecting it. In order that we may accomplish this, He has provided us with a collection of marvelous faculties. And has put us in the midst of a variety of natural resources. By the application of our faculties to these natural resources we convert them into products, and use them. (Man was created to have dominion, Genesis 2:28-29). This process is necessary in order that life may run its appointed course.

Life, liberty, and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place.

What, then, is law? It is the collective organization of the individual right to lawful defense.

Each of us has a natural right-from God-to defend his person, his liberty, and his property. These are three basic requirements of life, and the preservation of any one of them is completely dependent upon the preservation of any one of them is completely dependent upon the preservation of the other two. For what are faculties but the extension of our individuality? And what is property but an extension of our faculties?

If every person has the right to defend — even by force — his person, his liberty, and his property, then it follows that a group of men have the right to organize and support a common force to protect these rights constantly. Thus the principle of collective right — its reason for existing, its lawfulness — is based on individual right. And the common force that protects this collective right cannot logically have other purpose or any other mission than that for which it acts as a substitute. Thus, since an individual cannot lawfully use force against the person, liberty, or property of another individual, then the common force — for the same reason — cannot lawfully be used to destroy the person, liberty, or property of individuals or groups (due process of law) . . .

"When a portion of wealth is transferred from the person who owns it — without his consent and without compensation, and whether by force or by fraud — to anyone who does not own it, then I say that property is violated; that an act of plunder is committed." Denial of due process of law . . .

"The purpose of the law is to prevent injustice from reigning. In fact it is injustice, instead of justice, that

has an existence of its own. Justice is achieved only when injustice is absent . . .

"But make the laws upon the principle of fraternity — proclaim that all good, and all bad, stem from the law; that the law is responsible for all social inequalities — then the door is open to an endless succession of complaints, irritations, troubles, and revolutions . . .

Law is justice. And it is under the law of justice — under the reign of right; under the influence of liberty, safety, stability, and responsibility — that every person will attain his real worth and the true dignity of his being. It is only under this law of justice that mankind will achieve — slowly, no doubt, but certainly — God's design for the orderly and peaceful progress of humanity . . .

God has given men all that is necessary for them to accomplish their destinies . . .

And now that the legislators and do-gooders have so futilely inflicted so many systems upon society, may they finally end where they should have begun: May they reject all systems, and try liberty; *for liberty is an acknowledgment of faith in God and His works.*"

All of the foregoing principles are Scripturally supported as evidenced by a study of the Epistles of St. Paul, one of the truly learned men of all time, one of the references being; I Timothy 1:8-10, "But we know that the law is good, if a man use it lawfully. Knowing this, that the law is not made for a righteous man but for the lawless and disobedient, for murderers of fathers and murders of mothers, for manslayers; for fornicators, for them that defile themselves, for liars, for perjured persons, and if there be any other thing that is contrary to sound doctrine.

For the flesh lusteth against the Spirit, and the Spirit against the flesh; and these are contrary the one to the other, so that ye cannot do the things that ye would.

But if ye be lead by the Spirit, ye are not under the law."

Most of modern society would fall within the following classification, again quoting from St. Matthew 23:23-24

"Woe unto you, scribes and Pharisees, hypocrites. For ye pay tithes of mint and anise and cummin, and have omitted the weighter matters of the law, justice, mercy, and faith; these ought ye to have done, and not to leave the other undone.

"Ye blind guides, who strain at a gnat, and swallow a camel."

This Court in Antonio Richard Rochin, Plaintiff in Certiorari, v. People of the State of California, 342 U.S. 165; 72 S. Ct. 205, in broad terms alluded to the existence of the supremacy of higher principles and sources of justice in the language of Justice Frankfurther;

"These standards of justice are not authoritatively formulated anywhere as though they were specifics. Due process of law is a summarized constitutional guarantee of respect for those personal immunities which, as Mr. Justice Cardozo twice wrote for the Court, are "so rooted in the traditions and conscience of our people as to be ranked as fundamental."

It is recognized that our modern society has largely disparaged the sanctity of property and its inviolability, placing primary sociological emphasis upon the physical man, regardless of the depraved state in which an individual may have degenerated. But as the above quoted authorities well state, property cannot be distinguished from the other sovereign rights of man without destroying the others.

Applying this reasoning to the fact that none of the evidence was admitted, or permitted to be, relating to the background agreements between the syndicate and the United States it cannot with conviction be denied but what the petitioners were clearly denied the protection of "De process of law" and their petition for a writ of certiorari should be granted.

CONCLUSION

Petitioners respectfully pray that this petition for rehearing of their petition for writ of certiorari be granted, after oral argument, and upon the facts and the law.

Prepared By:

O. P. EASTERWOOD, JR.,
Barr Building,
Washington, D. C.

Of Counsel:
CLAIR F. ACHENBACH,
Davis Building,
Dallas, Texas 75202.